

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN**

---

WILLIAM C. DEMETROPOULOS,  
and JK, a minor,

Plaintiffs,

v.

Case No. 09-CV-530

WATERTOWN SCHOOL DISTRICT, and  
WATERTOWN POLICE DEPARTMENT,

Defendants.

---

**ORDER DENYING PLAINTIFFS' MOTION TO  
PROCEED *IN FORMA PAUPERIS* ON APPEAL**

---

On May 27, 2009, the plaintiffs in this action, William C. Demetropoulos and JK, a minor, filed a complaint in which they name the Watertown School District and Watertown Police Department as the defendants. Accompanying the plaintiffs' complaint was a petition to proceed *in forma pauperis*. In their complaint, the plaintiffs alleged that the defendants discriminated against JK because of his religion in violation of the First Amendment. Based upon the facts of the complaint, the court also discerned that the plaintiffs were pursuing a claim that the defendants violated JK's due process rights by failing to affirmatively protect JK from bullying in school.

On June 12, 2009, the court denied the plaintiffs' petition to proceed *in forma pauperis*. In rejecting the plaintiffs' petition, the court found that the plaintiffs' religious discrimination and due process claims failed to state claims upon which relief could be granted. With regards to the plaintiffs' religious discrimination claim,

the court reasoned that the plaintiffs' complaint did not state any facts with respect to JK's religion or with respect to how the defendants engaged in religious discrimination against JK. Additionally, the court reasoned that the defendants did not have an affirmative obligation under the Due Process Clause of the Fourteenth Amendment to protect JK from bullying at school.

Currently before the court is the plaintiffs' motion to proceed *in forma pauperis* on appeal. For the reasons which follow, the plaintiffs' motion will be denied.

Rule 24 of the Federal Rules of Appellate Procedure provides, in part, that "[e]xcept as stated in Rule 24(a)(3), a party to a district-court action who desires to appeal *in forma pauperis* must file a motion in the district court. The party must attach an affidavit that: (A) shows in the detail prescribed by Form 4 of the Appendix of Forms, the party's inability to pay or to give security for fees and costs; (B) claims an entitlement to redress; and (C) states the issues that the party intends to present on appeal." Furthermore, in order to authorize a litigant to proceed *in forma pauperis*, the court must make two determinations: first, whether the litigant is unable to pay the costs of commencing the appeal; and second, whether the appeal is frivolous or malicious. 28 U.S.C. §§ 1915(a) and (d). In doing so, the court is obliged to give the plaintiffs' pro se submissions a liberal construction. See *Haines v. Kerner*, 404 U.S. 519, 520-21, 92 S. Ct. 594, 595-96, 30 L. Ed. 2d 652 (1972).

At the outset, the plaintiffs have filed the appropriate documentation in support of their *in forma pauperis* petition. After reviewing the plaintiffs' motion, I am satisfied that they are unable to pay the costs of commencing their appeal.

Unfortunately for the plaintiffs, their motion to proceed *in forma pauperis* on appeal will be denied because the plaintiffs' appeal is frivolous. In *Lucien v. Roegner*, the Seventh Circuit stated that:

If, as here, a party is denied pauper status to proceed in the district court, he is back to square one. The district court's enquiry is once again on the merits of the party's claims. If the district court again finds them frivolous (as normally it would since it denied pauper status in its court), it should then deny leave to appeal in forma pauperis.

682 F.2d 625, 626 (7th Cir. 1982). Given the above, the plaintiffs' motion will be denied because the court remains satisfied that the plaintiffs' complaint fails to state any legally cognizable claims.

The plaintiffs are hereby notified that, pursuant to Fed. R. App. P. 24, they may file a motion to proceed on appeal *in forma pauperis* in the court of appeals within 30 days after they are served with a copy of the instant decision and order. Such motion must include a copy of the affidavit which the plaintiffs filed in the district court and the district court's statement of reasons for its action. See Fed. R. App. P. 24.

**NOW THEREFORE IT IS ORDERED** that the plaintiffs' motion to proceed *in forma pauperis* on appeal (Docket #10) be and the same is hereby **DENIED**.

Dated at Milwaukee, Wisconsin, this 19th day of August, 2009.

BY THE COURT:

A handwritten signature in black ink, appearing to read "J.P. Stadtmueller", is written over a horizontal line.

J.P. Stadtmueller  
U.S. District Judge